

RECEIVED

1993 - 8 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL  
FILE

In the Matter of

Amendment to the Commission's  
Rules to Establish New Personal  
Communications Service

) GEN Docket No. 90-314  
) ET Docket No. 92-100  
)  
) RM-7140, RM-7175, RM-7617,  
) RM-7618, RM-7760, RM-7782,  
) RM-7860, RM-7977, RM-7978,  
) RM-7979, RM-7980  
)  
) PP-35 through PP-40, PP-79  
) through PP-85

REPLY COMMENT OF  
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Texas Statewide Telephone Cooperative, Inc. ("TSTCI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. Section 1.415) and the Commission's Notice of Proposed Rulemaking and Tentative Decision ("Notice"), released August 14, 1992, hereby files Reply Comments to ensure that the record in this proceeding reflects the concerns of rural America.

TSTCI is a statewide organization<sup>1</sup> representing all telephone cooperatives and other rural independent telephone exchange companies in Texas. TSTCI's members are dedicated to serving the interests of rural subscribers throughout the state of Texas and, therefore, have an interest in this proceeding.

In the more than 7000 pages of comments filed in this proceeding, various parties seek to provide the Commission with their viewpoints concerning the proposed regulatory framework for the new Personal Communication Services ("PCS"). Implicit in each of the comments

<sup>1</sup>See Attachment A, TSTCI membership list.

already filed herein is the recognition that the decisions made today will shape the telecommunications industry as it enters the 21st Century. The general tenor of these voluminous comments, however, perceives the provision of PCS as a business opportunity, rather than as a service which should be available to all Americans. As the guardian of the public welfare in this economically, politically and socially decisive arena, the Commission must consider the magnitude of its undertaking and the impact of its decisions, particularly as they affect rural America.

By and large, only those commentators charged with the responsibility of providing telecommunications services to rural America have touched on the issue of the requirements of a regulatory system which will promote the provision of PCS in rural areas.<sup>2</sup> A notable exception is the United States Small Business Administration, which, in addressing the Commission's questions regarding local telephone exchange company ("LEC") participation in the provision of PCS, correctly recognizes that the "debarment of LECs may doom rural areas."<sup>3</sup> TSTCI is concerned that in introducing PCS to a marketplace which, under its own momentum, will concentrate on more lucrative, densely-populated areas, the Commission may neglect its duty to those citizens residing in non-urban areas.

---

<sup>2</sup>See, e.g., Comments of Clear Creek Mutual Telephone Company, et al., at 3-7; Comments of the National Telephone Cooperative Association at 1-8; Comments of NYNEX at 24; and Comments of OPASTCO/NRTA at 5-13.

<sup>3</sup>Comments of the United States Small Business Administration, at 21-23.

TSTCI submits that the needs of rural America will be addressed most effectively by adherence to two basic principles:

1. Rural telephone/cellular service providers must not be excluded from the opportunity to provide PCS within their service areas. To the extent that these entities desire to participate in the provision of PCS services outside their existing service areas, there exists no logical reason for preclusion. Further, to ensure that all areas of the country have equal access to PCS technology, the Commission should establish a short-term frequency reservation for the LEC provision of PCS within rural areas.
2. The Commission should allocate licenses to geographic areas in a manner which compliments the technical capabilities of PCS, and, at the same time, does not disadvantage rural areas. The most prudent manner, the one which best serves the FCC's goals of universality, speed of deployment, diversity of services and competition, is the adoption of licensed areas smaller than those tentatively proposed. Specifically, TSTCI proposes that licensing areas no larger than the existing MSA/RSA configurations be adopted. If a national licensing plan is enacted, the needs of rural America must be addressed squarely at the application phase, and no award of a national license should be made in the absence of a commitment by the licensee to provide PCS in rural America. In order to fulfill this commitment, rural LECs must not be precluded from participation in the ownership and operation of any proposed national licensee.

## **I. ELIGIBILITY FOR LICENSING AND LEC PARTICIPATION**

TSTCI endorses the concept of non-restrictive entry eligibility. The answer to vague suspicions of future anti-competitive conduct on the part of those already participating in the communications industry, whether from a landline or cellular basis, or both, is not wholesale rejection of the experience these companies have to offer.

In rural areas, sparse population densities will deter potential service providers from initiating service, because the smaller population base will require a longer period before any return on capital expenditures is realized. In these areas, it would be arbitrary and capricious to preclude the very entities which are committed and able to provide PCS service, the extant local telephone companies<sup>4</sup> and other communications service providers, from the PCS licensing process on the basis of the mere possibility that anti-competitive behavior may result. The Commission, together with other governmental agencies, including the Department of Justice and the Federal Trade Commission, have ample tools to address concerns regarding trade practices. Furthermore, private rights of action exist to ensure that victims of anti-competitive activities have the means to combat illegal activity.

A regulatory scheme which fails to recognize the distinct market characteristics of rural areas and facilitate the provision of PCS in sparsely-populated areas would be inconsistent with the FCC's stated goals. A regulatory scheme which effectively precludes service to

---

<sup>4</sup>The Commission itself recognizes that PCS is a natural compliment to wireline services, one which has the promise of reducing the costs of providing access to sparsely-populated areas. See Notice at 30.

certain groups or citizens would clearly be illegal. A regulatory scheme which more efficiently and effectively protects all consumers is one which does not prejudice potential entrants and allows informed business decisions and market forces to guide entry determinations.

TSTCI also endorses the proposal of several commentators that wireline service providers be granted a time-limited access to PCS licenses.<sup>5</sup> As recognized by the Commission,<sup>6</sup> PCS technology can be utilized efficiently by LECs serving dispersed populations as an alternative to local loop wire. Denying LECs access to this technology is equivalent to imposing needless costs on local consumers. The public benefit hardly can be served if one segment of the population is denied the recognized benefits of an advanced technology for the sake of "protecting" it from potential anti-competitive activity which can be addressed by existing regulatory tools and other legal means.

## II. LICENSING AREAS

Just as rural areas will suffer if the Commission does not accommodate their unique characteristics by specifically allowing rural LECs to participate in the provision of PCS service, sparsely-populated areas will also be harmed if the Commission specifies very large licensing areas. Service providers will naturally concentrate on providing service to the most lucrative portions of their licensed areas first--the more densely populated areas. This fact will lead to delay,

---

<sup>5</sup>See, e.g., Comments of the Rural Independent Coalition at 4-8; Comments of Clear Creek Mutual Telephone Company, et al., at 6; and Comments of the National Telephone Cooperative Association at 3-8.

<sup>6</sup>See infra n. 4 and accompanying text.

if not denial, of service to more sparsely populated areas within the licensed service areas.

TSTCI submits that smaller licensing areas will better serve rural America, and better accommodate the nature of PCS itself, in view of the fact that the service is based on smaller, lower-powered cells and is envisioned by the Commission itself as extremely flexible.<sup>7</sup> TSTCI recognizes that several commentators in this proceeding have suggested that the Commission implement nation-wide licensing.<sup>8</sup> However, TSTCI views national licensing as the least attractive licensing scheme, inasmuch as the problems with large licensed areas outlined above would be carried to the extreme. Should, however, the Commission determine that at least one national license is appropriate as a testing ground for its suggestion that PCS may lend itself to economies of scope or scale, it is crucial that the Commission, under those circumstances, attend to the needs of rural America. To protect communications consumers in more sparsely-populated areas of the country, TSTCI submits that any national licensing scheme must also provide for LEC access to spectrum within the LEC's service area in order to ensure that the benefits of PCS technology, as applied to current wireline service, can be made available in a timely fashion to rural America.

---

<sup>7</sup>The Commission's proposed definition of PCS is extremely broad: "a family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a variety of competing networks." Notice at 14.

<sup>8</sup>See, e.g., Comments of Bell Atlantic at 15, n. 28 and at 27; Comments of Celsat at 13; and Comments of MCI at 4-13.

In addition, if the Commission were to undertake a national licensing plan, it must, by definition, specifically address the needs and concerns of rural America. Failure to address the communications requirements of a portion of the nation under a "national" plan clearly would be contrary to the fundamental purpose for which the Commission was created - to make communications by wire and radio available "to all the people of the United States."<sup>9</sup> Consequently, an applicant for a national PCS license must be required to operate under standards which ensure the availability of PCS technology to every potential consumer in the nation. These standards should be specifically detailed by the Commission and applicants for national licenses should be required to provide a credible plan of implementation.

In order to facilitate the implementation of any such proposal, the Commission should not preclude rural LEC participation in the ownership and operation of a national licensee. The concerns which TSTCI and other commenters have raised with respect to the impact of a national licensing scheme on the deployment of new services in rural America would only be exaggerated further by excluding rural LECs from such participation. TSTCI respectfully submits that, given their commitment to service in rural America, the participation of rural LECs is essential if any national licensing scheme is to even merit consideration.

Lastly, TSTCI submits that regardless of whether licenses are to be national, regional or local in scope, the Commission should not hinder

---

<sup>9</sup>47 U.S.C. § 151

the provision of PCS service by auctioning PCS licenses. As the Commission recently recognized, it currently lacks explicit authority to award licenses through auctions, and there has been no indication that it will receive such authority.<sup>10</sup> It would be contrary to the Commission's goals to delay the licensing of PCS services any longer than necessary by pursuing auction authority. Moreover, TSTCI submits that auctioning would hinder the provision of PCS service to rural America by predetermining, in large measure, that licensees are to be selected not on the basis of service commitment, but on the basis of an applicant's present cash flow.

### III. CONCLUSION

Just as telephone service itself, together with mass media, ensured the integration of rural America into the economic, political and social mainstream of the country, the continued access to technological advances in the delivery of communications services will guard against the possibility that the sheer weight of numbers, as measured by population density, will separate the urban advantaged from the rural disadvantaged. As guardian of the interests of all Americans, the Commission must recognize the potential tyranny of the marketplace, and, therefore, be guided by consideration of how best to ensure that rural Americans enjoy equal access to the advantages of PCS technology. In addition, the Commission must recognize that failure to consider the impact of its PCS rules on rural areas would be disastrous. If haste to deliver PCS to the more lucrative, urban markets blinds the Commission

---

<sup>10</sup> See Order, In the Matter of Policies and Rules for Licensing Fallow 800 MHz Specialized Mobile Radio Spectrum Through a Competitive Bidding Process, FCC DA 92-1677, December 16, 1992, at para. 3.

to the requirements of rural America, it will have failed to fulfill its statutory mandate to ensure that telecommunications services are made available on a Nation-wide basis.<sup>11</sup>

Respectfully submitted,



Texas Statewide Telephone  
Cooperative, Inc.  
by

Stephen G. Kraskin  
Sylvia L. Lesse  
Charles D. Cosson

Its Attorneys

2120 L Street, N.W., Suite 810  
Washington, D.C. 20037  
(202) 296-8890  
FAX: (202) 296-8893

---

<sup>11</sup>47 U.S.C. Section 151.

Attachment A

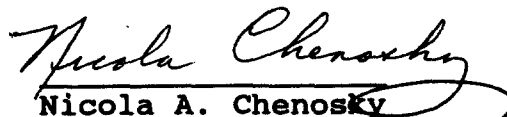
TSTCI Member Companies

TOTAL NUMBER OF ACCESS LINES: 145,000

Big Bend Telephone Company, Inc.  
Brazoria Telephone Company  
Brazos Telephone Cooperative, Inc.  
Cameron Telephone Company  
Cap Rock Telephone Co., Inc.  
Central Texas Telephone Coop., Inc.  
Coleman County Telephone Coop., Inc.  
Colorado Valley Telephone Coop., Inc.  
Comanche County Telephone Co., Inc.  
Community Telephone Co., Inc.  
Cumby Telephone Cooperative, Inc.  
Dell Telephone Cooperative, Inc.  
E.N.M.R. Telephone Cooperative, Inc.  
Eastex Telephone Cooperative, Inc.  
Electra Telephone Company  
Etex Telephone Cooperative, Inc.  
Five Area Telephone Coop., Inc.  
Ganado Telephone Co., Inc.  
Guadalupe Valley Telephone Coop., Inc.  
Hill Country Telephone Coop., Inc.  
Industry Telephone Company  
La Ward Telephone Exchange, Inc.  
Lake Dallas Telephone Co., Inc.  
Lake Livingston Telephone Co.  
Livingston Telephone Company  
Mid-Plains Rural Telephone Coop., Inc.  
Muenster Telephone Corp. of Texas  
North Texas Telephone Company  
Panhandle Telephone Coop., Inc.  
Peoples Telephone Coop., Inc.  
Poka Lambro Telephone Coop., Inc.  
Riviera Telephone Co., Inc.  
Santa Rosa Telephone Coop., Inc.  
South Plains Telephone Coop., Inc.  
Southwest Arkansas Telephone Coop., Inc.  
Tatum Telephone Company  
Taylor Telephone Cooperative, Inc.  
Valley Telephone Cooperative, Inc.  
Wes-Tex Telephone Cooperative, Inc.,  
West Texas Rural Telephone Coop., Inc.  
XIT Rural Telephone Coop., Inc.

**CERTIFICATE OF SERVICE**

I, Nicola A. Chenosky, hereby certify that a copy of the reply comment of Texas Statewide Telephone Cooperative, Inc. ("TSTCI") was sent on this, the 8th day of January, 1993, by first class United States mail, postage prepaid, to those listed below.

  
Nicola A. Chenosky

Thomas P. Kerester, Esq.  
Chief Counsel  
Barry Pineles, Esq.  
Assistant Chief Counsel  
OFFICE OF ADVOCACY  
United States Small Business  
Administration  
409 3rd Street, S.W.  
Washington, D.C. 20416

Mark S. Fowler  
James H. Barker  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, D.C. 20004

Mirijana Kocho  
Mary McDermott  
George J. Brennan  
Patrick J. O'Shea  
NYNEX CORPORATION  
120 Bloomingdale Road  
White Plains, NY 10605

David Cosson  
L. Marie Guillory  
NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION  
2626 Pennsylvania Avenue, N.W.  
Washington, D.C. 20037

Andrew D. Lipman  
Catherine Wang  
SWIDLER & BERLIN, CHTD.  
3000 K Street, N.W.  
Washington, D.C. 20007

MCI Corporation  
Larry A. Blosser  
Donald J. Elardo  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

Victor J. Toth  
LAW OFFICES, VICTOR J. TOTH,  
P.C  
2719 Soapstone Drive  
Reston, VA 22091